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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 17th December 2012

No. 10415—li/I(BH)-2/2009-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd July 2012 in Industrial Dispute Case No. 4 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Reliance Industries Ltd., and their employees Shri Arun Kumar Sahoo, Pravat Kumar Swain and Subrat Kumar Mishra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

I INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 4 OF 2009

Dated the 23rd July 2012

Present :

Shri Raghbir Dash, O.S.J.S. (Sr. Branch)
Presiding Officer,
Industrial Tribunal
Bhubaneswar.

Between :

The President, . . . First Party—Management
M/s Reliance Industries Ltd.,
Dhenkanal Manufacturing Division,
At/P.O./Dist. Dhenkanal.

And

1. Shri Arun Kumar Sahoo,
S/o Germany Sahoo,
At Talakbeda, P.O. Kaniha,
Dist. Angul.

2. Shri Pravat Kumar Swain,
C/o Laxmidhar Swain,
Gayatri Nagar,
At/P.O./Dist. Dhenkanal.

3. Late Subrat Kumar Mishra, . . . Second Party—Workmen
substituted by his legal
heir Swetapadma Mishra,
At/P.O. Nuasasan,
Dist. Dhenkanal.

Appearances :

Shri Manoranjan Barick, Manager (HR).	. . . For First Party –Management
Shri Arun Kumar Sahoo, one of the concerned workmen.	. . . For Second Party— Workmen

AWARD

The Government of Odisha in their Labour & E.S.I. Department in exercising powers conferred upon them by Section 12 (5) readwith Section 10 (1) (d) of the Industrial Disputes Act ,1947 (14 of 1947) (for short, the 'Act'), have referred the following dispute to this Tribunal for adjudication vide their Order No. 2748–li/1-(BH)-2/2009-L.E., dated the 17th March 2009.

"Whether the actions of the management of M/s Reliance Industries Ltd., Baulpur, district Dhenkanal in terminating the services of Shri Arun Ku. Sahoo in their letter, dated 12-5-2008, Shri Pravat Ku. Swain and Shri Subrat Ku. Mishra both in separate letters, dated 8-5-2008 are legal and/or justified ? If not, what relief are they entitled to ?"

2. Out of the three employees named in the schedule of reference, Subrat Kumar Mishra, having died during pendency of the case was substituted by his widow and she having entere into a settlement with the management during the pendency of the case the terms of settlement have been recorded vide Order No. 38, dated 27-3-2012 of this I.D. case.

3. There is no dispute between the parties that the disputant workmen had joined with the erstwhile management of the first party industry and they continued to work under present management till their services were terminated in the month of May 2008. It is also not in dispute that initially they were working as Junior Chemists and with effect from the 12th September 1997 they were redesignated as Shift Chemists and, subsequently, vide Order, dated 1-9-2006 they were designated as Executives Quality Control. It is also not in dispute that while they were working as Executive Quality Control the management terminated their services with effect from the 12th May 2008 on the ground of recession and loss.

It is the further case of the disputant workmen that as Junior Chemists/Shift Chemists they used to do chemical test of raw materials and finished products, besides related ministerial works

like noting of results, preparing reports, etc. No subordinate was placed to work under them, nor did they perform any supervisory work. Even after they were re-designated as Executive Quality Control with effect from the 1st September 2006 there was no change in the nature of their job. Therefore, they are "workmen" as defined under the Act. Consequently, their retrenchment which is not in accordance with the mandatory provisions of the Act is illegal. According to them, the management has contravened the provisions contained in Sections 25-N and 25-G of the Act.

4. The first party challenges the maintainability of the reference on several grounds. It is contended that the second party members are not "workmen" as defined under the Act. That apart, the Conciliation Officer did not conduct any investigation before submitting the conciliation failure report and, therefore, the reference made by the State Government is without jurisdiction inasmuch as, there was least application of mind by the State Government machinery in their opinion making process prior to making the reference. That apart, the dispute has not been raised by any Union. Further, it is contended that the establishment of the first party having ceased its production process with effect from the 22nd June 2008 and virtually closed all its activities since then the reference has become infructuous.

On the circumstances that led to the termination of services of the disputant workmen it is explained that when the industry continued to incur heavy loss on account of various reasons it took several cost effective measures including drastic reduction of the managerial, supervisory and executive manpower of the establishment. Most of those categorises of employees tendered voluntary resignation. Thereafter, the services of the balance idle manpower of the aforesaid categories including the second party members were terminated by the management in accordance with the terms and conditions of their respective contract of employment.

According to the management, the second party members belonged to the 'Executive' cadre of the first party establishment. 'Executive' cadre being distinct and different from the 'workman' working in the establishment, the second party members cannot be said to be 'workman' as defined under the Act. As Executives, the second party members were not members of any of the Trade Unions formed by the workers of the first party and all settlements between the management and the Trade Unions were made not applicable to the 'Executives' including the second party members.

5. In their rejoinder the disputant workmen have not denied the first party's averment with respect to the stoppage of production process since 22-6-2008.

6. Basing on the pleadings of the parties, the following issues have been settled :—

ISSUES

- (i) "Whether the action of the management of M/s Reliance Industries Ltd., Baulpur, district Dhenkanal in terminating the services of Shri Arun Kumar Sahoo in their letter Dt. 12-5-2008, Shri Pravat Kumar Swain and Shri Subrat Kumar Mishra both

in separate letters, Dt. 8-5-2008 are legal and/or justified ? If not, what relief are they entitled to ?

- (i) (a) Whether the reference is maintainable ?
- (ii) Whether the claimants are coming within the definition of "workmen" as defined under the I.D. Act ?"

7. The contesting second party members namely, Arun Kumar Sahoo and Pravat Kumar Swain are examined as W.W. Nos. 1 and 2, respectively, and exhibits 1 to 6 have been marked on behalf of the second party. Similarly, the management has examined two witnesses. M.W.1 is its ex -General Manager (Technical & Quality Control) and M.W. No.2 is its Manager(HR). Exts.A to F have been marked at the instance of the first party.

FINDINGS

8. *Issue No. (ii)*—In Para. 9 of the claim statement disputant workmen have asserted that they were doing the job of Analyst; that their job was related to chemical test of solution preparation, finished products testing, preparation of reports and noting down the result in the report book; that in absence of operators they used to collect the samples of finished products besides checking the cutting chamber with regard to the existence of "rat's tail" and other foreign materials. It is further asserted that though all of them were redesignated as Shift chemists and subsequently as Executive Quality Control, they continued to do the same nature of job without any basic change in their nature of job. It is also asserted that no subordinate employees were working under them and that they were not doing any supervisory work. It is also asserted that they had no authority to take any independent decision nor was any financial power vested with them. In reply to Para. 9 of the claim statement, the first party has stated in para.11.5 of its written statement as follows :

"Paragraph 9 contains self-styled assertion of performance of duties with the sole objective for sustaining the present reference, which is denied. Evidently, their factual work performance under the 1st party management were without dispute, in Executive and Supervisory grade with specific duties and responsibilities and being never covered within the provisions of the I.D. Act. It is specifically denied that the nature of the job/work of the said second party members was purely manual and clerical as alleged."

Thus, the factual aspect with regard to the nature of duty that the second party members used to perform, which is narrated in Para. 5 of the claim statement, is not disputed by the first party.

9. M.W. No.1 in his affidavit evidence has stated that the job of a Shift Chemist/Executive Quality Control is to collect samples of different items through the production department. In that regard they have independent and discretionary decision making power to either reject or accept the samples and to advise the production department to give fresh samples either before or after

the testing. In case of any gross abnormality detected during testing they have also the discretion to cause re-sampling. A Shift Chemist also keeps co-ordination with other departments to achieve specific grade of products. The job of analysing and testing of samples is self supervising in nature as it mostly relates to computerised and manual testing. The Shift Chemist records and reports the test results with analysis to the concerned department for further action.

In his cross-examination M.W. No.1 has stated that there was no other employee to assess the Shift Chemists in their work. He has further admitted that at a particular point of time all the Junior Chemists were designated as Shift Chemists and thereafter no Junior Chemists were appointed and that after such re-designation the shift chemists continued to perform all the functions they used to perform as Junior Chemists. He has further admitted that the testing report of a Chemist can be either accepted or rejected by authorities like Manager, Senior Manager and General Manager of the Department, if by way of re-checking or re-testing the result of the report is found to be incorrect.

M.W. No.2 in his cross-examination has stated that the disputant workmen as Shift Chemists were not supposed to assess the annual performance of any other employees, that they were not empowered to sanction leave of any other employee and that no other Chemist used to work under their supervision. He has further admitted that upon re-designation of the "Shift Chemists" as "Executive Quality Control" in the year 2006 no higher pay scale was awarded to them.

It is on record that in the year 2006 all the Shift Chemists were re-designated as Executive Quality Control and they were brought from non-executive cadre to executive cadre. According to the management, the second party members being in executive cadre have availed all the benefits from the first party as 'Officers' of the establishment and therefore, they are now estopped to claim themselves to be 'workmen'. It is also pointed out that consequent upon their becoming members of the executive cadre the disputant workmen, like other Shift Chemists ceased to become members of the workers' Trade Union and the settlements between the management and the Workers' Union were no more made applicable to them. It is well settled that to come to a conclusion that a person is working in supervisory capacity it is necessary to prove that there are at least some persons working under him whose work he is required to supervise. Supervision necessarily refers to persons working under the supervisor and does not extend to supervision of plant and machineries. A supervisor has the power to give direction and exercise control over others. It is the management to prove that the employee concerned is excluded from the definition of 'workmen'. In the case at hand, the management has not produced any material showing that a Shift Chemist/Executive Quality Control had any power of supervision over any other employee. Rather, there are materials showing that no other employee was working under a Shift Chemist /Executive Quality Control. It is also admitted that all the Shift Chemists were in non-executive category and as such they were members of the workers' Union but when they were brought to the executive category in the year 2006 they ceased to become members of the workers' Trade Union, despite of the fact that there was no change in their nature of job. But, merely with the change of designation/cadre and without change in the nature of work a person cannot be excluded from the definition of 'workman'.

The management has not clearly pleaded as to whether the second party members were employed in any supervisory capacity or they were mainly in a managerial or administrative capacity. Rather, the stand taken by the first party is that the moment the second party members were brought to the executive cadre they became officers and in that sense they are not 'workmen'. This contention is not acceptable. Since materials are available to establish that the second party members had neither supervisory nor managerial nature of work, they are to be accepted as workmen.

10. Reliance has been placed on Exts. A, A/1 and A/2, the Performance Appraisal Forms, submitted by the second party members. These are found to be self-assessment of performance made by each of the scond party members containing different columns including one in which the employee concerned is required to assess his supervisory effectiveness. While assessing their performance with respect to their supervisory effectiveness the second party members have mentioned that they have effectively supervised the shift work and they keep good link between the management and the non-supervisory staff. Relying on such self-assessment reports it is argued on behalf of the management that the second party members have admitted to have had supervisory power. But, Ext. A series do not reflect that the second party members had the power supervision over any other employees. Therefore, Ext. A series, in the absence of any other material, is not helpful to the management.

As already stated, there is no specific pleading in the written statement that the nature of work of the second party members was either managerial or supervisory. On the other hand, it is not disputed that the job of the second party members was confined to chemical test of raw materials which is essentially technical in nature. In *Burmah Shell Co. Vs. Burmah Shell Management Staff Association and others*, reported in 1970 (II) LLJ (SC) 590, it is held that Chemists who are employed on technical work are "workmen".

In the result, the second party members come within the definition of 'workmen' as defined under the Act.

11. *Issue No. (i)*—The second party claims infraction of the provisions contained under Sections 25-N and 25-G of the Act. It is claimed that the total staff strength of the first party was more than 100 which is not disputed by the first party. It is also not specifically denied that Section 25-N of the Act is applicable to the establishment of the first party. Nor is it claimed that the provisions of either Section 25-F or 25-N of the Act have been complied with. Rather, it is pleaded by the first party that the services of the second party members were dispensed with in accordance with the terms and conditions of their contract of employment and each of them was paid an amount constituting six months' salary towards *ex gratia* and three months' notice pay as per the terms of appointment. It is not claimed that retrenchment benefit as contemplated under Section 25-F or 25-N of the Act was paid or offered to them at the time of their retrenchment. Since the second party members are held to be 'workmen', termination of their services in contravention of Section 25-F or 25-N of the Act is, therefore, held to be illegal.

12. It is alleged that Section 25-G of the Act was also violated by the first party. But, in course of trial it has come to the fore that the unit of the first party has already stopped the process of production or any operation and that the management has reduced its man power to only four officers for the purpose of record keeping and maintenance work. There is no specific plea as to who are juniors to the second party members but were retained in service while bringing about the retrenchment under consideration. According to the management, barring a few of the Shift Chemists/ Executives Quality Control others had opted to avail the Voluntary Retirement Scheme and the services of those who did not opt to avail that scheme were terminated. Thus, in the absence of sufficient materials it is not possible to hold that Section 25-G of the Act has been violated. Since it is shown by the management that work force has been reduced to only four employees by the end of 3rd quarter of 2009 (vide Ext.F), it is to be held that the retrenchment of the second party members is justified.

In Para. 9 of the written statement it is pleaded that operation process of the first party establishment was ceased with effect from 22-6-2008 and as of now there is no officer, executive, staff or workman employed in the establishment in connection with the manufacturing process or factory operation whatsoever. This plea is not denied by the second party who has filed rejoinder on each of the paragraphs of the written statement. Under such circumstances, it would not be just and proper to direct reinstatement of the second party members.

The services of the second party members were terminated in the month of May 2008 and the operation process of the first party establishment ceased with effect from the 22nd June 2008. After ceasing of the operation process all the employees working in the establishment left the employment in different phases. The first party applied for closure of the industry with effect from the 6th February 2009 but the same was refused by the Government. All these please taken in Para. 9 of the written statement have not been specifically denied by the second party.

In their rejoinder the second party members have stated that 24 Executives standing in the same footing as the disputant workmen were retrenched in similar fashion with effect from the 2nd January 2009 and when they raised a dispute before the District Labour Officer, Dhenkanal the dispute was amicably resolved and the management agreed to pay certain amount to each of them over and above the V.R.S. Package.

In addition to that it is also on record that one of the second party members has settled the dispute with the management by entering into a settlement in Form-K, in terms of which a sum of Rs. 10,52,360 (Rupees ten lakh fifty-two thousand three hundred sixty) only was agreed to be paid as one time lump sum/*ex gratia* payment towards full and final settlement of the service claims subject to income tax deductions.

13. Considering all these facts and circumstances, this Tribunal is of the considered view that the remaining two second party members should be allowed to get the same relief that the management has agreed to extend to the widow of late Subrat Kumar Mishra. This is so observed with a view to maintaining parity amongst the second party members. Therefore, it is held that the contesting second party members are entitled to get the relief in terms of the settlement between the management and the widow of late Subrat Kumar Mishra, which is to form part of this Award.

14. *Issue No. (i) (a)*—One of the grounds on maintainability of the reference is that the Conciliation Officer did not conduct any investigation before submitting the conciliation failure report and the State Government machineries while making the reference did not apply their mind in their opinion making process. Such a ground cannot be entertained by this Tribunal. In National Engineering Industries Ltd. *Vrs.* State of Rajasthan, AIR 2000 (SC) 469 Hon'ble Supreme Court have held that Industrial Tribunal being the creation of statute it cannot go into the question on validity of the reference.

Another ground is that the dispute has not been raised by any Union. Since the dispute is with regard to termination of service of the workmen, it is not necessary that their Union should espouse their cause. Such dispute is deemed to be an 'industrial dispute' and individual workman can raise such a dispute. The other ground on maintainability is that the establishment of the first party having ceased its production process with effect from the 22nd June 2008 and closed all its activities since then, the reference has become infructuous. It is admitted that the Government has refused permission for closure of the unit. Therefore, on the ground of closure the management cannot take such a stand. In support of this contention no authority has been cited. According to this Tribunal, such a ground is not available to be raised by the management.

The reference is answered accordingly.

The terms of settlement drawn up in Form-K, recorded on 27-3-2012 do form part of this Award.

Dictated and corrected by me.

RAGHUBIR DASH

23-7-2012

Presiding Officer

Industrial Tribunal

Bhubaneswar

RAGHUBIR DASH

23-7-2012

Presiding Officer

Industrial Tribunal

Bhubaneswar

FORM-K

(See Rule 64)

MEMORANDUM OF SETTLEMENT SIGNED BETWEEN THE MANAGEMENT OF M/S .RELIANCE INDUSTRIES LIMITED, DHENKANAL MANUFACTURING DIVISION, BAULPUR, DHENKANAL AND SWETAPADMA MISHRA, WIFE OF LATE SUBRAT KUMAR MISHRA ON 27th MARCH 2012

Representatives of Management

1. Shri Brijesh Singh Bhaduria
Sr. General Manager (HR).
2. Shri Manoranjan Barik
Manager (HR).

Name of the Workman

1. Smt. Swetapadma Mishra
W/o Late Subrat Kr. Mishra

SHORT RECITAL OF THE CASE

WHEREAS, Late Subrat Kumar Mishra, Executive while working under M/s. Reliance Industries Limited, Dhenkanal Manufactruing Division was terminated from the services of the Company on 12-5-2008.

WHEREAS, Late Subrat Kumar Mishra and other two executives S/Shri Arun Kumar Sahoo and Pravat Kr. Swain, who were also terminated, being aggrieved with the said termination of employment raised industrial dispute and the said dispute was reffered to the Hon'ble Industrial Tribunal, Bhubaneswar for adjudication, challenging the said Order of termination as illegal under the I.D. Act and claiming reinstatement with full back wages. Accordingly, a case has been registered before the Hon'ble Industrial Tribunal as I.D. Case No. 4 of 2009. During the pendency of the proceedings, the employee, namely, Shri Subrat Kumar Mishra expired and his wife Swetapadma Mishra was substituted in his place.

WHEREAS, while the matter stood thus, Swetapadma Mishra, W/o Late Subrat Kumar Mishra being one of the disputant in the above case volunteered bipartite negotiations for resolving the disputes and differences between them amicably in preference to finding endless and uncertain litigations and after several discussions, have agreed to settle the disputes and differences in the following :—

Sd/-Manoranjan Barik

Sd-Swetapadma Mishra

TERMS OF SETTLEMENT

Both the parties agreed to the following terms and conditions:—

1. It is agreed by and between the parties that the dispute is settled amicably by treating the cessation of employment as 12-5-2008 finally and they will not insist for further proceeding in I.D. Case No. 4 of 2009 in such regard.

2. That purely on a sympathetic ground, the management has agreed to pay and Mrs. Swetapadma Mishra and her minor daughter Ananya Mishra has agreed to receive one time lump sum/*ex gratia* payment of Rs. 10,52,360 (Rupees ten lacs fifty-two thousand three hundred sixty only) towards full and final settlement of the service claims of late Subrat Kumar Mishra subject to income tax deduction as per the Income Tax Act/Rules as applicable. Accordingly, the payment of Rs. 8,79,621 (Rupees eight lacs seventy-nine thousand six hundred twenty-one only) after deduction of tax is paid to Swetapadma Mishra vide Demand Draft bearing No. 202567, Dt. 24-3-2012 payable on ICICI Bank, Dhenkanal Branch.
3. That it is agreed by and between the parties that this settlement settles all the disputes and differences between the parties arising out of the employment and in respect of the termination of her husband late Subrat Kumar Mishra.
4. That both parties agree to file this settlement before the Presiding Officer, Industrial Tribunal, Bhubaneswar in the aforesaid I.D. Case No. 4/2009 for acceptance and passing of the appropriate Award.
5. That it is also agreed by the parties that no other or further dispute relating to the past service/employment of late Subrat Kumar Mishra shall subsist any more much less raised in future by virtue of this settlement against M/s Reliance Industries Limited, Dhenkanal Manufacturing Division, P.O. Baulpur, District Dhenkanal. Neither Swetapadma Mishra nor any other person on her behalf shall raise any dispute before any Court of Law pertaining to the termination of her late husband and/or financial/other demand whatsoever against the management of M/s Reliance Industries Limited, Dhenkanal Manufacturing Division.
6. That this settlement is signed and executed by the parties out of their own free will and volition without being actuated by any threat, coercion or undue influence, whatsoever.

Sd-Manoranjan Barik

Sd-Swetapadma Mishra

This settlement signed by the parties today i.e. on 27-3-2009.

REPRESENTING THE COMPANY

SECOND PARTY

(BRIJESH SINGH BHADAURIA)

(SWETAPADMA MISHRA)

(MANORANJAN BARIK)

W/o Late Subrat Ku. Mishra

WITNESSES

mother/guardian of

1. Surendra Nath Mishra

Ananya Mishra

2. Aditya Mishra, Advocate, Orissa High Court

By order of the Governor

J. DALANAYAK

Under-Secretary to Government